

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.353 OF 2003

Shree Krishna Polyster Limited
396, Veer Savarkar Marg, Prabhadevi,
Mumbai - 400 025 .. Appellant.

V/s.

The Dy.Commissioner of Income-tax,
Special Range-53, Mumbai, having
his office at Aayakar Bhavan,
Maharshi Karve Marg,
Mumbai - 400 020. .. Respondent.

Mr.F. Irani with Atul K. Jasani for the appellant.

Mr.R.V. Desai, Senior counsel with Ms.S.V. Bharucha
i/b. P. Kapur for the respondent.

**CORAM : R.M. LODHA, &
J.P. DEVADHAR, JJ.**

DATED : 16H OCTOBER, 2004.

ORAL JUDGMENT : (Per R.M. Lodha, J.)

Having heard Mr.F. Irani, the learned counsel for the appellant - assessee and Mr.R.V. Desai, the learned senior counsel for the revenue, we are of the view that substantial question of law that arises in the appeal may be framed and the appeal be disposed of finally at this stage.

2. The substantial question of law is thus :

Whether the income received by the assessee on the surplus money in public issue of shares invested in bank deposits for a period of 45 days was assessable under the head 'income from other sources' ?

3. Mr.F. Irani, the learned counsel for the appellant - assessee strenuously urged before us that the interest earned by the assessee in investing the surplus funds received in public issue for a short period of 45 days was assessable under the head 'profits and gains of business' and not 'income from other sources'. In support of his submission, the learned counsel relied upon the following judgments :
 i) Commissioner of Income-tax V/s. Tamil Nadu Dairy Development Corporation Limited [216 ITR 535] (Madras High Court); ii) Snam Progetti S.P.A. V/s. Additional Commissioner of Income-tax [132 ITR 70] (Delhi High Court) and the judgment of this Court in the case of Commissioner of Income Tax V/s. Paramount Premises Pvt Ltd. [190 ITR 259].

4. The Tribunal found as a fact that the assessee is engaged in the business of manufacture of synthetic yarn and money lending has never been the business activity of the assessee. The assessee received surplus money in public issue and the said

money was invested in bank deposits for a period of 45 days. The assessee who carries on business does not mean that all income received by him is business income since he may have income that may be classified under the different heads as set out in Section 14 of the Income Tax Act. Need we emphasise that the mode and manner in which the income is derived helps in determining under which head the income received by the assessee would fall. The facts which have been found by the Tribunal lead to the conclusion that the interest that the assessee earned from short term investment of surplus money received in public issue did not spring or emanate from the business activity of the assessee. The interest income in respect of the surplus money not required for business immediately and deposit in banks as idle money, in our opinion, would be assessable as 'income from other sources' in the facts and circumstances of the present case.

5. The Rajasthan High Court in the case of Commissioner of Income Tax V/s. Rajasthan Land Development Corporation [211 ITR 597] noticed the following principles regarding the interest income.

"i) interest on fixed deposits and other deposits before the commencement of the business is income from other sources.

ii) income from interest on deposits of surplus money during the construction period is also to be considered / treated as income from other sources.

iii) interest income in respect of surplus money, not required for business and deposited in bank or person, as idle money, for safe keeping would be assessable as income from other sources. If the income from interest is from a fund which has been brought as surplus capital, it would be assessable as income from other sources.

iv) in respect of investment of surplus funds there is divergence of opinion between different High Courts and this court in the case of Murli investments Co. held that if the surplus funds are invested instead of keeping them idle, the income by way of interest should be treated as income from other sources.

v) if the surplus funds emerge out of business carried on by the assessee which is regularly carried on by the assessee and then with the intention to carry on the business of lending of money or money-lending the loan is advanced, the income therefrom would be income from business. The intention has to be gathered with reference to all the activities of advancing money which should be permitted by the objects of the company and also by the resolution of the board of directors to carry on the business of money-lending or lending of money."

6. The Madhya Pradesh High Court in the case of Commissioner of Income Tax V/s. Madhya Pradesh State Industries Corporation Limited [69 ITR 824] held that the assessee company was not a banking company and the deposit of surplus share money in bank and the interest earned thereon was not in the

ordinary course of business and it was merely a transaction relating to its share capital and not an act in the course of business and, accordingly, the interest earned on the deposits made by the assessee cannot be regarded as income under the head 'profits and gains of the business' but has to be treated as 'income from other sources'.

7. In Tuticorin Alkali Chemicals and Fertilizers Limited V/s. Commissioner of Income-tax [227 ITR 172], the three Judge bench of the Supreme Court held that the surplus funds in short term deposits in order to earn interest in a company that has not commenced business will be chargeable under Section 56. In other words, such income cannot be charged under the head 'profits and gains of the business'.

8. In Tamil Nadu Dairy Development Corporation Limited, the facts before the Madras High Court related to the funds which were acquired from the business activity and in that backdrop it was held that the interest accrued on short term deposit was the business income.

9. Similarly, in the case of Snam Progetti

S.P.A. before Delhi High Court, the interest income was earned from the funds received from business activity and it was held that the income from interest from bank deposits is business income for the purpose of set-off. Tamil Nadu Dairy Development Corporation and Snam Progetti S.P.A. do not apply to the facts of the present case.

10. In Paramount premises (P) Limited, the question before the division bench of this Court was whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the interest on temporary loan from surplus funds of Rs.14,686/- was business receipt and cannot be assessed as income from other sources during the Assessment Year 1978-79. The finding of fact recorded by the Tribunal was that income from interest was in the nature of business income and did not arise out of independent activity and, accordingly this Court upheld the view of the Tribunal that the interest income was business income of the assessee.

11. The learned counsel for the appellant then contended that the surplus money from the public issue was a working capital. We are afraid this was

not the case of the assessee either before the Assessing Officer or before the Commissioner of Income Tax (Appeals). It was not the case before the Income Tax Appellate Tribunal nor is a case even in the memo of appeal before us. We notice the said contention and reject it accordingly.

12. From what we have discussed above, in the facts and circumstances of the present case, it cannot be said that the surplus funds available with the assessee acquired in public issue were the funds acquired from the business activity and when it is not so, the interest earned thereon in short term deposit cannot be treated as business income and has to be treated as income from other sources.

13. We, accordingly, hold that the income of interest earned by the assessee by investing surplus money received in public issue in bank deposits for a period of 45 days was assessable to income under the head 'income from other sources'. The finding recorded by the Tribunal in this regard is upheld.

14. The appeal is, accordingly, dismissed with no costs.

(R.M. LODHA, J.)

(J.P. DEVADHAR, J.)